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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2012-0081, Sequence 5]

**Federal Acquisition Regulation; Federal Acquisition Circular
2005-60; Small Entity Compliance Guide**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This Small Entity Compliance Guide has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2005-60, which amends the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding this rule by referring to FAC 2005-60, which precedes this document. These documents are also available via the Internet at <http://www.regulations.gov>.

DATES: [Insert date of publication in the **FEDERAL REGISTER**.]

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2005-60 and the FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755.

List of Rules in FAC 2005-60

<u>Item</u>	<u>Subject</u>	<u>FAR Case</u>	<u>Analyst</u>
*I	Reporting Executive Compensation and First-Tier Subcontract Awards	2008-039	Clark
II	Payments Under Time-and-Materials and Labor-Hour Contracts	2011-003	Chambers
*III	Extension of Sunset Date for Protests of Task and Delivery Orders (Interim)	2012-007	Lague
IV	DARPA-New Mexico Tax Agreement	2012-019	Chambers
V	Clarification of Standards for Computer Generation of Forms	2011-022	Lague
VI	Technical Amendments		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item numbers and subject set forth in the documents following these item summaries. FAC 2005-60 amends the FAR as specified below:

Item I—Reporting Executive Compensation and First-Tier Subcontract Awards (FAR Case 2008-039)

The interim rule published in the Federal Register at 75 FR 39414 on July 8, 2010, is adopted as final with changes. This rule implements section 2 of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), which requires the Office of Management and Budget to establish a free, public, website containing full disclosure of all Federal contract award information.

The interim rule required contractors to report executive compensation and first-tier subcontract awards on contracts expected to be \$25,000 or more. This information is available to the public.

The final rule removes the exception for inserting the clause in classified solicitations and contracts, or solicitations or contracts with individuals. Classified information is not required to be disclosed. The clause is not prescribed for contracts unless they are required to be reported in the Federal Procurement Data System (FPDS). The final rule clarifies the responsibility of contracting officers to correct data originating from FPDS found by the contractor to be in error when the contractor completes the subcontract report. The definition of first-tier subcontractor is revised to allow contractors greater flexibility to determine their first-tier subcontractors. The rule also clarifies that a contractor must enter Transparency Act data when registering in the Central Contractor Registration (CCR) database and the contractor is

required to report its executive compensation in CCR as a part of its annual registration requirement in CCR.

Item II—Payments Under Time-and-Materials and Labor-Hour Contracts (FAR Case 2011-003)

This final rule amends the FAR with regard to payments under time-and-materials and labor-hour contracts. First, the rule harmonizes payment provisions under commercial time-and-materials and labor-hour contracts and non-commercial time-and-materials and labor-hour contracts, largely by having commercial time-and-materials and labor-hour contracts adopt the payment provisions of non-commercial time-and-materials and labor-hour contracts. Second, the rule harmonizes conflicting provisions of the "Allowable Cost and Payment" and "Payments Under Time-and-Materials" and "Labor-Hour Contracts" clauses, which are both prescribed under non-commercial time-and-materials contracts and labor-hour contracts, by using the same periods for invoicing, and submission of the completion voucher as those set forth in the "Allowable Cost and Payment" clause. This harmonization will serve to benefit small businesses under time-and-materials and labor-hour contracts by permitting bi-weekly rather than monthly invoicing, and providing contracting officers with the discretion to authorize even more frequent payments.

Item III—Extension of Sunset Dates for Protests of Task and Delivery Orders (FAR Case 2012-007) (Interim)

This interim rule amends the FAR to implement section 825 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111-383) and section 813 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81). These statutes extend the sunset date for protests against awards of task or delivery orders to September 30, 2016. There is no effect on Government automated systems.

Item IV—DARPA-New Mexico Tax Agreement (FAR Case 2012-019)

This final rule amends the FAR to add the United States Defense Advanced Research Projects Agency (DARPA) to the list of agencies that have entered into an agreement with the State of New Mexico. The agreement eliminates the double taxation of Government cost-reimbursement contracts when contractors and their subcontractors purchase tangible personal property to be used in performing services in whole or in part in the State of New Mexico, and for which title to such property will pass to the United States upon delivery of the property to the contractor and its subcontractors by the vendor. Small businesses benefit from this agreement because they will no longer have the administrative effort and cost associated with collecting this tax.

Item V—Clarification of Standards for Computer Generation of Forms (FAR Case 2011-022)

DoD, GSA, and NASA published a proposed rule in the Federal Register at 76 FR 79609 on December 22, 2011, to implement the removal of Federal Information Processing Standard (FIPS) 161. FIPS 161 is being removed based on the notice posted in the Federal Register at 73 FR 51276 on September 2, 2008, by the Department of Commerce. This is a technical change acknowledging the removal by the Department of Commerce of FIPS 161 and replacement with the American National Standards Institute (ANSI) X12 set of standards. There is no impact to the Government or contractors in establishing ANSI X12 as the new standard. Small businesses will continue to be able to generate forms by computer. No public comments were received on the proposed rule, therefore, the final rule will be published with no changes.

Item VI—Technical Amendments

Editorial changes are made at FAR 1.105-2, 16.301-3, 22.1801, 22.1802, 52.212-5, 52.215-20, 52.222-54, and 52.223-2.

Dated: July 16, 2012

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